

1204from

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1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----X
5 ADONNA FROMETA,
6 PLAINTIFF,
7
8 -against- Index Case No:
9 07CIV6372
10
11 MARIO E. DIAZ-DIAZ, ALL AMERICAN HAULERS
12 RECYCLING,
13 -----X
14 DEFENDANTS.
15
16 DATE: December 4, 2007
17 TIME: 2:10 P.m.
18
19 EXAMINATION BEFORE TRIAL of the
20 Defendant, MARIO E. DIAZ-DIAZ, taken by the
21 Plaintiff, pursuant to an Order, held at the
22 office of Wilson, Elser, Moskowitz, Edelman &
23 Dicker LLP, 150 East 42nd Street, 23rd Floor
24 New York, New York 10017 before Lorraine
25 DeSalvo, a Shorthand Reporter and Notary
Public of the State of New York.

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1
2 A P P E A R A N C E S:
3
4 SLAWEK W. PLATTA, LLM
5 Attorney for Plaintiff
6 42 Broadway
7 Suite 1927
8 New York, New York 10004
9 BY: SLAWEK W. PLATTA, ESQ.
10
11 WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER, LLP
12 Attorneys for the Defendants
13 150 East 42nd Street
14 New York, New York 10017
15 BY: JOHN A. HSU, ESQ.
16
17 ALSO PRESENT
18 MARTA MONTENEGRO-SPANISH INTERPRETER
19
20 * * *
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23
24
25

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1
2 F E D E R A L S T I P U L A T I O N S
3
4 IT IS HEREBY STIPULATED AND AGREED
5 By and between the counsel for the respective
6 parties hereto, that the filing, sealing, and
7 certification of the within deposition shall
8 Be and the same are hereby waived;
9
10 IT IS FURTHER STIPULATED AND AGREED
11 That all objections, except as to the form
12 of the question, shall be reserved to the times
13 of the trial.
14
15 IT IS FURTHER STIPULATED AND AGREED
16 That the within deposition may be signed before
17 Any Notary Public with the same force and
18 effect
19 As if signed and sworn to before this court.
20
21
22 * * * *
23
24
25

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5

1
2 M A R I O E. D I A Z-D I A Z, called as a
3 witness, having been first duly sworn by a
4 Notary Public of the State of New York, was
5 examined and testified (through the Spanish
6 interpreter) as follows:
7 EXAMINATION BY
8 MR. PLATTA:
9 Q. Please state your name for the
10 record.
11 A. Mario E. Diaz-Diaz.
12 Q. Where do you reside?
13 A. 91 Sprint Street, Apartment 1,
14 Passey, New Jersey 07055.
15 Q. Good afternoon. My name is Slawek
16 Platta. I'm representing Adonna Frometa who is
17 with us today in this lawsuit that happened on
18 February 14, 2007, and I will be asking you
19 questions regarding this accident today. If at
20 any point in time you don't understand my
21 questions, please let me know and I'll rephrase
22 it otherwise I will assume that you understood
23 my question and you answered truthfully. I
24 will also ask you to keep your responses verbal
25 as nods of a head cannot be recorded by the

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1 M. DIAZ-DIAZ
2 court reporter. Do you understand me so far?
3 A. Yes.
4 Q. Did you have any problem
5 understanding the interpreter so far?
6 A. No.
7 Q. Sir, can you tell me how long have
8 you lived at 91 Sprint Street in Passey, New
9 Jersey, apartment one?
10 A. Two and a little bit more years.
11 Q. Where did you live before that?
12 A. With my family, my wife and my
13 children.
14 Q. Where was that?
15 A. At 274 Main Avenue in the same
16 area.
17 Q. Passey Park as well in New Jersey?
18 A. Yes.
19 Q. Can you tell me, do you have an
20 apartment number or do you own the house?
21 A. I shared the house with my wife's
22 sister.
23 MR. HSU: He didn't ask you who you
24 lived there with. He just asked you
25 where did you live, was it was a house.

6

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2 Q. How many years did you study there?
3 A. Six years.
4 Q. Did you study anywhere before you
5 went to the Study Center of Espaillat?
6 A. Yes, my primary school, a public
7 school.
8 Q. How many years in primary school?
9 A. Six years.
10 MR. HSU: Public school not private
11 school?
12 MR. PLATTA: No, public.
13 Q. Did you study anywhere else besides
14 those two schools?
15 A. No.
16 MR. HSU: Are you asking him to go
17 back to grammar school?
18 MR. PLATTA: Right.
19 MR. HSU: Do you want just after
20 high school where he studied?
21 MR. PLATTA: Right.
22 MR. HSU: Do you want to know if
23 there was anywhere else that he studied?
24 A. No.
25 Q. When did you come to the United

8

1 M. DIAZ-DIAZ
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1 M. DIAZ-DIAZ
2 Listen to the question. If he wants to
3 know that, he'll ask you, okay?
4 THE WITNESS: Okay.
5 A. It was a house.
6 Q. How long did you live at this
7 address?
8 A. Three years that I live in that
9 address.
10 Q. Sir, can you tell me what is your
11 highest level of education?
12 A. I graduated in Santa Domingo. I
13 graduated as bachelor's degree in mathematics
14 and science.
15 Q. Can you tell me the name of the
16 school?
17 A. It's a study center Espaillat,
18 E-S-P-A-I-L-L-A-T.
19 Q. Which city was it was located in?
20 A. Santa Domingo.
21 Q. And when did you graduate?
22 A. 1978.
23 Q. Did you receive a bachelor's degree
24 from the school?
25 A. Yes.

7

1 M. DIAZ-DIAZ
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2 States?
3 A. August 8, 1998, pardon, August
4 10th.
5 Q. Did you come here with a visa or
6 something else?
7 A. Came with a residence.
8 Q. Did you apply for residence in your
9 country?
10 A. No, my wife applied for me over
11 here.
12 Q. Your wife was living here at the
13 time?
14 A. Yes.
15 Q. Were you married to her on February
16 14, 2007?
17 A. Yes, sure.
18 Q. Can you tell me who did you live
19 with in your apartment at 91 Sprint Street on
20 February 14th?
21 A. My wife and my girls.
22 Q. Can you tell me the name of your
23 wife and your children?
24 A. Mayra Beltren is the last name, and
25 Luciann Diaz the only ones of my children, Anna

9

1 M. DIAZ-DIAZ
2 Marie Diaz the youngest one. I would like to
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3 make a question.
4 MR. HSU: No. You don't ask the
5 questions, he asks the questions. Step
6 outside for a second.
7 [Discussion held off the record.]
8 Q. Can you tell me what is your date
9 of birth?
10 A. May 22, 1957.
11 Q. And the date of birth of your wife?
12 A. April 7, 1965.
13 Q. And the ages of your three
14 children?
15 A. 12 years old Luciann, the other one
16 is 11.
17 Q. Which one?
18 A. The little one is seven.
19 Q. Which one is seven?
20 A. Mayra.
21 Q. And the other one that was 11 is
22 Anna Marie?
23 A. 11.
24 Q. Sir, did you have a car in your
25 household on February 14th of 2007?

11

M. DIAZ-DIAZ

1
2 A. Yes.

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4 MR. HSU: It's unlikely that we'll
5 provide that policy.
6 Q. Sir, did you have any other vehicle
7 in your household at that time?
8 A. No.
9 Q. On February 14th of 2007, who was
10 your employer?
11 A. All American Hauling.
12 Q. What was your position with this
13 company?
14 A. Driver.
15 Q. How long were a driver with this
16 company before February 14th of 2007?
17 A. From the November of 2006.
18 Q. Did you work for them in any
19 position before November of 2006?
20 A. No.
21 Q. Who was your prior employer prior
22 to November of 2006?
23 A. I was working for ERG Container
24 Service.
25 Q. What was your position with this

12

M. DIAZ-DIAZ

1 company?
2
3 A. Driver.

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3 Q. What kind of car?
4 A. Astro van '97.
5 Q. Did you carry insurance on this
6 vehicle on February 14th of 2007?
7 A. The vehicle belonged to my wife.
8 MR. HSU: Do you know if the
9 vehicle had insurance on it on February
10 14, 2007?
11 THE WITNESS: Yes, it had
12 insurance.
13 Q. Can you tell me which insurance
14 company was insuring your vehicle at the time?
15 A. That car belonged to my wife and
16 the insurance was under her name. She knows
17 about that.
18 Q. Would you have anything at home,
19 the name of the insurance company insuring your
20 vehicle on February 14, 2007?
21 A. Yes, it's possible.
22 MR. PLATTA: I'll call for the
23 insurance policy of the company of the
24 two vehicles.
25 MR. HSU: Follow-up. Even the car

11

M. DIAZ-DIAZ

1
2 that was not involved in the accident?
3 MR. PLATTA: Correct.
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4 Q. How long did you work for them?
5 A. About four years, three or four
6 years, I don't remember exactly.
7 Q. Do you remember when you began
8 working for them?
9 A. It was August or September, I can't
10 remember, it was 2004 or 2005.
11 Q. Who did you work for before August
12 or September of 2004 or 2005, who was your
13 prior employer?
14 A. I worked for Counter Revolution.
15 Q. What was your position with this
16 company?
17 A. Driver too, I was a driver too.
18 Q. Can you tell me when did you start
19 working for Counter Revolution?
20 A. It was like, I don't remember
21 exactly the year. I just remember it was on
22 the holy week, Good Friday that I went to work
23 with them, but I don't remember if it was 2003
24 or 2004.
25 Q. So you started working for Counter

13

M. DIAZ-DIAZ

1 Revolution either 2003 or 2004; is that
2 correct?
3
4 A. I can't remember exactly.
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5 Q. Would you have any documents at
6 home that would indicate when you did you work
7 for each one of those companies, and by that, I
8 mean pay checks or pay stubs, whatever you
9 would have?

10 A. It's possible.

11 MR. PLATTA: I'll call for a
12 production of any documents including
13 pay stubs or any other documentation or
14 authorizations or records from those
15 companies regarding the employment of
16 Mr. Diaz in 2003 to 2007.

17 MR. HSU: Follow-up all requests in
18 writing.

19 Q. Sir, can you tell me, did you work
20 for anyone else as a driver before?

21 MR. HSU: Before Counter

22 Revolution?

23 MR. PLATTA: Before Counter

24 Revolution.

25 A. No.

14

M. DIAZ-DIAZ

2 Q. What was your position and with
3 which company before?

4 A. I worked for a company with the

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6 A. I don't know, I just went to the
7 eye doctor and they recommended me the glasses
8 and now I see well.

9 Q. Can you tell me since when do you
10 wear glasses?

11 A. I only got them four to five years.

12 Q. And who was the first doctor that
13 prescribed for you glasses?

14 A. I don't remember the name, but they
15 were located on Jefferson and Main, but they
16 lost the place the location, the business and
17 they moved, they are not there anymore.

18 Q. In 2007 on February 14th, who was
19 your eye doctor?

20 A. I don't remember her name, I went
21 to her clinic and she was taking care of me,
22 one day she gave me the card, but I don't
23 recall.

24 Q. Do you recall the name of the
25 clinic?

16

M. DIAZ-DIAZ

2 A. No.

3 Q. Do you recall the location of the
4 clinic?

5 A. Yes, sir.

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5 name of something like Melrose.

6 Q. What did you do for them?

7 A. You mean before this company?

8 MR. HSU: No. What did you do for
9 the company Melrose.

10 A. I was using a machine like a robot,
11 welding pieces.

12 Q. Do you have a New York State
13 driver's license?

14 A. New Jersey.

15 Q. Since when did you have a New
16 Jersey driver's license?

17 A. Okay, I came in 1998 and I got my
18 license probably before from this country
19 before April '99.

20 Q. And by driver's license of this
21 country you mean a New Jersey driver's license?

22 A. Yes.

23 Q. On February 14th of 2007, did you
24 have any restrictions on your driver's license?

25 A. Yes, I had.

15

M. DIAZ-DIAZ

2 Q. What kind of restrictions?

3 A. Glasses.

4 Q. Can you tell me, are you farsighted
5 or nearsighted?

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6 Q. What is the location?

7 A. In Jefferson on Main Avenue.

8 Q. Would you have anything at home
9 that would indicate the name of this facility,
10 of this place?

11 A. I don't have any papers, but the
12 store, the place is still there, I can see the
13 address and everything.

14 MR. PLATTA: I'll call for
15 production of the name and address and
16 HIPAA records for the eye doctor that
17 treated Mr. Diaz prior to February 14,
18 2007.

19 MR. HSU: Taken under advisement.
20 His eye condition at this point was not
21 an issue, he didn't testify that he was
22 wearing glasses. If or when you ask him
23 at the time if he tells us that he
24 wasn't wearing his eyeglasses, but given
25 the fact whether he was wearing glasses

17

M. DIAZ-DIAZ

2 or not would not play any role in the
3 record, but I'll observe your objection.

4 Q. Sir, as we sit here today, when was
5 the last time that your eyes were examined?

6 A. That was like in February or March,

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7 after I got my income tax and I went to see a
8 gentleman, his name is Cologne, and I bought
9 the actual glasses that I wear today.

10 Q. Which year was it?

11 A. This year.

12 Q. Was it prior to or after February
13 14, 2007?

14 A. After one second yes, it was after.

15 MR. HSU: Did you get your eyes
16 examined at that time or did you just
17 change the frame of your glasses?

18 THE WITNESS: I bought a new pair
19 of glasses because the frame that I was
20 wearing before hurt the side of my eyes.

21 Q. At that time in February or March
22 of this year after the accident, did you have
23 your eyes examined?

24 A. No. After the accident it was a
25 change of the frame lenses.

18

M. DIAZ-DIAZ

2 MR. HSU: He never said after.

3 THE INTERPRETER: After I changed
4 only the frames.

5 Q. Did you also change the lenses?

6 A. Okay, I can't tell you, I just know

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8 you have today are the same ones that you had
9 at or around the time of the accident, February
10 14th of 2007?

11 MR. HSU: When you say lenses, do
12 you mean prescription?

13 MR. PLATTA: The physical lenses
14 that he has on his face today.

15 A. They changed.

16 Q. At the time when they changed, did
17 you have a prescription to have new lenses?

18 A. No. I went to buy glasses to play
19 soccer and when I told the lady that the actual
20 glasses that I wear, the frame was hurting my
21 face she recommended for me to change the ones
22 that I wear today.

23 MR. HSU: Off the record.

24 [Discussion held off the record.]

25 Q. Sir, at the time of the this change

20

M. DIAZ-DIAZ

2 of your lenses, did you have any kind of
3 medical advice as to change your lenses?

4 MR. HSU: He never did say that he
5 changed the prescription. He only said
6 that he changed the frame and size of
7 the lens, just the lenses but he never

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7 that I got the new glasses and I bought a new
8 pair of sunglasses.

9 Q. The shape of the glasses that you
10 have now is the same shape of the lenses that
11 you had in your prior glasses?

12 A. They were bigger, these are more
13 fashionable, I changed that for that reason.

14 Q. Can you tell me by that are you
15 referring the lenses or glasses?

16 A. I didn't change the lenses, they
17 changed the format that fit to the new frame.

18 Q. Okay, is it fair to say the lenses
19 that you have today are not the same ones that
20 you had or were wearing at the time of the
21 accident or around the time of the accident?

22 MR. HSU: I'm going to object to
23 the form. You can answer.

24 A. I went to see him because the other
25 place where I went closed, so I told him they

19

M. DIAZ-DIAZ

2 were hurting my face the other ones, so he
3 didn't measure anything, he just changed the
4 frame and he only measured me for the
5 sunglasses because I needed those to play
6 softball.

7 Q. Can you tell me if the lenses that

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8 said he never said - you don't
9 necessarily need a prescription to
10 change the size of the lenses, so if you
11 want to ask him if he needed a
12 prescription to change the size of the
13 lens, but you asked a question that
14 assumes an answer, and he didn't need a
15 prescription to change the size of his
16 lenses.

17 MR. PLATTA: That's fine, I'll ask
18 that.

19 Q. Did you need a prescription to
20 change the size of the lenses?

21 A. They did it without a prescription.

22 MR. HSU: Do you know if you needed
23 a prescription, do you know if you
24 needed a prescription to change the size
25 of your lenses and if you don't know,

21

M. DIAZ-DIAZ

2 it's okay. Do you know?

3 THE WITNESS: No, no, no.

4 MR. HSU: Do you know?

5 THE WITNESS: I'm getting confused.

6 MR. HSU: The lenses that you wore
7 after the accident, did you need a
8 prescription.

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9 THE WITNESS: No, I didn't need a
10 prescription. They didn't prescribe me
11 to change glasses, I just went because I
12 needed to change the frame.

13 Q. Right now with the new lenses do
14 you see better, same or worse than you saw
15 before the lenses were changed?

16 MR. HSU: Objection to the form.
17 You can answer.

18 A. I see the same.

19 Q. When was the last time that you saw
20 a medical doctor regarding your eyes?

21 MR. HSU: For an examination.

22 MR. PLATTA: Anything at all, not
23 just an eye examination.

24 A. The lady just told me to go
25 somewhere else, but I went to see a doctor and

22

M. DIAZ-DIAZ

1 he told me that I was good.

2 Q. When was that?

3 A. I don't remember that well when I
4 got my first lenses with her, but I don't
5 remember when I saw this doctor.

6 MR. HSU: Was it before or after
7 this accident that we are here for

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10 lenses.

11 MR. HSU: Prescription is
12 different, if you use a word that is not
13 interpreted in multiple ways.

14 Q. Sir, do you have these glasses
15 pursuant to any prescription?

16 A. Yes.

17 Q. And they were prescribed to you to
18 correct your vision?

19 A. Exactly.

20 Q. Before that, did you have a problem
21 seeing far or seeing near?

22 MR. HSU: Note my objection to the
23 form. Before he was prescribed the
24 glasses?

25 MR. PLATTA: Yes.

24

M. DIAZ-DIAZ

1 A. I really got it especially for
2 reading.

3 Q. So in other words, before you got a
4 prescription you had a problem reading?

5 A. I couldn't see small letters.

6 Q. Without glasses could you see me
7 today clearly or not?

8 MR. HSU: I'm going to object to

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9 today?

10 THE WITNESS: No, that was way
11 before.

12 Q. From the time when you started
13 wearing corrective lenses, how many times was
14 your eye vision examined?

15 MR. HSU: When did he testify that
16 he wore corrective lenses, glasses you
17 mean? Objection to the question.

18 Q. Sir, to your understanding, are
19 your glasses corrective lenses?

20 MR. HSU: Corrective lenses can be
21 contacts, so I think that glasses is the
22 easiest way that he understands.

23 MR. PLATTA: Let's see if he
24 understands and take it from there.

25 MR. HSU: You just said corrective

23

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1 lenses, you used that word.

2 MR. PLATTA: And I want to check
3 his opinion.

4 MR. HSU: What are you asking, if
5 he knows if corrective lenses are also
6 glasses, they can be?

7 MR. PLATTA: You can have
8 sunglasses that are also corrective

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10 the form.

11 A. I see clearly.

12 Q. Sir, did you ever change the
13 medical doctor that was taking care of your
14 vision?

15 MR. HSU: From the original
16 prescription?

17 MR. PLATTA: From the first time,
18 that is correct.

19 A. The lady moved that I had to go to,
20 the other gentleman changed the frame.

21 Q. When was the first place that you
22 went to get your prescription, was it on
23 Jefferson and Main Avenue?

24 A. On Jefferson.

25 Q. Where was the second place that you

25

M. DIAZ-DIAZ

1 went to have your vision checked?

2 MR. HSU: I'm going to object. He
3 never said that he went to have his
4 vision checked. He said that he went to
5 get sunglasses and while he was there he
6 told the woman that the frame was
7 hurting his head.

8 MR. PLATTA: I didn't talk about
9 the time after the accident. I'm

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11 talking about from the beginning when he
12 got his glasses.

13 MR. HSU: But he never said that.
14 You are putting words in his mouth. If
15 you want to ask, did he have his lenses
16 checked but you can't put answers in the
17 question.

18 Q. Did you get your lenses changed
19 after the first time on Main Avenue and
20 Jefferson, did you get your lenses changed
21 after the first time on Jefferson?

22 A. When I couldn't find the lady, she
23 moved, I went to look for this person. I went
24 again but I just changed the frame, what I told
25 you before.

26

M. DIAZ-DIAZ

2 Q. Sir, is it fair to say that from
3 the initial visit from Jefferson and the time
4 after the accident when you went to change your
5 glasses that you had no medical examination for
6 your vision?

7 A. Yes. I told you before that she
8 sent me to another place and the doctor that
9 saw me told me my vision was very good, no
10 problem.

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12 MR. HSU: Is this place in Clifton
13 the same place where you changed the
14 frame and got the sunglasses?

15 THE WITNESS: No, a different
16 place.

17 Q. Was it in 2006?

18 A. Yes.

19 Q. Do you remember if it was in the
20 summer or winter or at any time during the
21 year?

22 A. I have to see the card, I saw it
23 the other day, I can't remember.

24 Q. Do you have it at home?

25 A. Possibly.

28

M. DIAZ-DIAZ

2 MR. PLATTA: I'll call for the
3 production of the HIPAA compliance of
4 the records of the clinic located on
5 Jefferson Avenue where Mr. Diaz was
6 treated for his eye problem, and I'll
7 repeat my request for Jefferson and Main
8 Avenue clinic where he testified before
9 that he was treated as well for his eye
10 problem.

11 MR. HSU: Let the record reflect

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11 Q. Was there another place?

12 MR. HSU: This was asked and
13 answered already. He already told you
14 about the second place.

15 MR. PLATTA: No. He said that he
16 had one place and you objected.

17 MR. HSU: No. The place where he
18 got the frames changed, he told you
19 where that was.

20 MR. PLATTA: I want to check, can
21 you tell me where did you go for the
22 second place?

23 A. Clifton Avenue near to Main Avenue.

24 Q. Also in Jefferson?

25 A. Clifton.

27

M. DIAZ-DIAZ

2 Q. Where did you go to this place on
3 Clifton?

4 A. Exactly, I don't have the address
5 exactly.

6 Q. Was it before or after the accident
7 of February 14th of 2007?

8 A. Yes, that was before.

9 Q. And when was it, in 2007?

10 A. No, because when I went and they
11 told me I was okay, not in 2007.

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12 that he never testified that he had an
13 eye problem, and if and when he
14 testifies that he had an eye problem-up
15 to this point he hadn't testified that
16 he had a problem seeing on the date of
17 the accident or he wasn't wearing his
18 glasses. If he does that at that point
19 we will consider giving you a HIPAA
20 compliance.

21 Q. During the first initial visit at
22 Jefferson clinic, can you tell me what did your
23 doctor tell you about your eye vision?

24 A. She told me to see a doctor, but I
25 didn't go to see doctor that she told me to see

29

M. DIAZ-DIAZ

2 so I went to the one that takes care of my
3 father-in-law because I trusted him more.

4 Q. Do you know what was the reason for
5 which she sent you to see this other doctor?

6 A. Yes. Okay, she told me that
7 probably I could have glaucoma and when I saw
8 the doctor he said, who does she think that she
9 is to diagnose that to you.

10 Q. But the first doctor that you saw,
11 was that an eye doctor?

12 A. Okay, she was the person like an
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13 optician, from a optical place so she
 14 recommended glasses.
 15 MR. HSU: I don't know where are
 16 you going with this, but it's been 25
 17 minutes, so if you want to continue this
 18 line of questioning unless have you
 19 established some basis for going into
 20 his eyes for the last 30 minutes that he
 21 had an eye problem. This is not a
 22 fishing expedition. I don't think it's
 23 relevant, if you want we'll call a judge
 24 and get a ruling if you want to go
 25 deeper.

30

M. DIAZ-DIAZ

1 MR. PLATTA: This is a motor
 2 vehicle accident and he had a
 3 restriction on his vision. His medical
 4 condition is an issue at this point.
 5 MR. HSU: In this automobile
 6 accident if he said that he wasn't
 7 wearing his glasses or if he said that
 8 he had a problem with his vision but he
 9 said neither.
 10 MR. PLATTA: I assure you, you are
 11 wrong. If you object I will call the
 12

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14 I went to the one that takes care of my
 15 father-in-law.
 16 MR. HSU: Was he the doctor just
 17 for glaucoma or problems with your
 18 vision?
 19 THE WITNESS: I went for the
 20 glaucoma.
 21 MR. HSU: I'm not allowing anymore
 22 questions. He said it's glaucoma.
 23 MR. PLATTA: Whenever I ask you a
 24 question about your visual examinations,
 25 I'm absolutely not interested in your

32

M. DIAZ-DIAZ

1 condition with glaucoma, I'm only
 2 interested in eye doctors.
 3 MR. HSU: But he didn't say. There
 4 is no question pending. You didn't
 5 specify that. He can see an eye doctor
 6 for glaucoma. You have to specify, is
 7 it for glasses or glaucoma, his answer
 8 was truthful and accurate. You can see
 9 an eye doctor for other things besides
 10 vision.
 11 Q. The first time when you saw the
 12 doctor in Jefferson, did you see this doctor
 13

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13 judge, but I'll tell you this, I will be
 14 soft on that, but I'll have to get some
 15 more on vision.
 16 Q. Besides these two visits, the first
 17 one being four or five years ago, 2003 or 2004
 18 and the second one being in 2006 that you
 19 testified so far, did you see an eye doctor at
 20 any other time?
 21 MR. HSU: Note my objection to the
 22 dates in question.
 23 Q. When was it?
 24 A. I don't have the date exactly, but
 25 the doctor told me that I didn't have any other

31

M. DIAZ-DIAZ

1 problem.
 2 Q. Was this doctor associated with
 3 Jefferson Clinic or Clifton Clinic?
 4 A. Nothing to do with no, they had
 5 nothing to do with each other. She sent me to
 6 another female doctor but I went to the one
 7 with my father-in-law.
 8 MR. HSU: Is this because they
 9 thought that you had glaucoma?
 10 A. Yes, she is the one who told me
 11 that I could have that and she sent me to
 12 another female doctor, but I didn't go because
 13

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14 solely for your eye condition?
 15 MR. HSU: What eye condition,
 16 specify glaucoma or prescriptions.
 17 Q. Prescriptions.
 18 A. Exactly for vision only.
 19 Q. And the second time that you
 20 testified that was in 2006, did you see this
 21 doctor in Clifton for your eye vision?
 22 MR. HSU: For prescription or
 23 glaucoma.
 24 MR. PLATTA: Okay, he just told me
 25 that he had to see this doctor.

33

M. DIAZ-DIAZ

1 A. The doctor that she sent me but I
 2 didn't do go. I went to see a very good
 3 specialist and he checked me and he checked my
 4 glaucoma too, and everybody knows him and
 5 whoever had problems in Passey and he performed
 6 the surgery.
 7 MR. HSU: Just listen to the
 8 question.
 9 Q. Sir, in Clifton in 2006 the doctor
 10 that you referred to that was treating you, was
 11 he treating you also for a prescription, did he
 12 give you any prescriptions for your eyes?
 13 MR. HSU: Objection to form
 14

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15 treating.
 16 A. I saw him for the recommendations
 17 that the doctor gave me about glaucoma.
 18 Q. Sir, can you tell me from the
 19 beginning from 2003 or 2004 when you first
 20 started having prescription for your eyes how
 21 many doctors, did you see who give you either a
 22 prescription or treated your eye condition?
 23 MR. HSU: Objection to the form and
 24 condition, one, two, three, four, five,
 25 six, how many times?

34

M. DIAZ-DIAZ

1 THE WITNESS: Three times.
 2 Q. Can you tell me if the first one
 3 was in Jefferson on Main Avenue?
 4 A. Yes.
 5 Q. And the second time was where?
 6 A. The specialist in Clifton.
 7 Q. When?
 8 A. I just told you that I don't
 9 remember.
 10 MR. HSU: I think he already
 11 testified it was 2006.
 12 MR. PLATTA: Was this the same
 13 visit?
 14

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1204from

16 second one being in Clifton of 2006.
 17 A. No.
 18 * Q. The first time when you saw the
 19 doctor four or five years ago, what did she
 20 tell you regarding your eyes?
 21 MR. HSU: This was asked and
 22 answered already. Don't answer it.
 23 I'll be right back.
 24 [Discussion held off the record.]
 25 MR. HSU: Give me five minutes,

36

M. DIAZ-DIAZ

1 I'll go get the judge's number. Mark
 2 that question for a ruling. I'll let
 3 him answer that one question. Read back
 4 the question.
 5 [Whereupon, the requested portion
 6 of the record was read back by the Court
 7 Reporter.]
 8 MR. HSU: The first time.
 9 A. The first time that I saw her was
 10 for my glasses.
 11 Q. What did she tell you?
 12 A. I went because I couldn't read
 13 small letters, that was the first time.
 14 MR. HSU: You had difficulty seeing
 15

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1204from

15 Q. Did you see him in 2006?
 16 A. Yes.
 17 Q. And the third time, when was it?
 18 A. When I went to change the lenses.
 19 Q. At the time that you went to change
 20 the lenses, did you also see a doctor?
 21 A. No, no doctor.
 22 Q. So is it fair to say that you had
 23 two visits with doctors regarding your eyes?
 24 MR. HSU: Objection. His testimony
 25 speaks for itself. His testimony is on

35

M. DIAZ-DIAZ

1 the record. You just asked him how many
 2 visits, how many times he was at a
 3 doctor for his eyes, he testified the
 4 first time, the time and second time,
 5 now you're asking him if he is a fool.
 6 You don't need to capitulate. The
 7 testimony speaks for itself. It's asked
 8 and answered 10 different times, 10
 9 different ways, slawek.
 10 MR. PLATTA: Things about glaucoma.
 11 MR. HSU: But he just clarified it.
 12 Q. Sir, besides these two times, did
 13 you see a medical doctor for your eyes or not,
 14 the first one being the first prescription
 15

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1204from

16 small letters, right?
 17 THE WITNESS: Yes.
 18 MR. HSU: Then you went to the eye
 19 doctor, right?
 20 THE WITNESS: Yes.
 21 Q. And he gave you a prescription,
 22 right?
 23 A. Yes.
 24 Q. And after she gave you the
 25 prescription you could see the small letters,

37

M. DIAZ-DIAZ

1 right?
 2 A. Yes.
 3 Q. Did she tell you that you had to go
 4 back to see her at any time in the future?
 5 A. Excuse me. My daughter is on the
 6 phone.
 7 [Discussion held off the record.]
 8 A. Yes. She told me to come back and
 9 I came back to her, I went to times to see
 10 them.
 11 Q. When was the second time?
 12 A. I can't remember but the second
 13 time when she told me they to check my eyes
 14 because of the possible glaucoma, I have a card
 15 at home that has the date that I saw that
 16

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1204from

17 doctor but I can't remember, it was after that
18 she told me to go see the specialist. Off the
19 record.

20 [Discussion held off the record.]

21 Q. After the third time that you saw
22 the doctor, did she tell you to come back
23 again?

24 MR. HSU: I object to the third
25 time. That's when he said that she

38

1 M. DIAZ-DIAZ

2 referred him to the another doctor,
3 that's when I don't think there was a
4 third time. I think there was two times
5 but I'll allow him to answer.

6 A. She did call me because she told me
7 that she was moving, she moved to another place
8 and by the time that she called me I told her
9 that I already saw the specialist, and she
10 called all her clients.

11 Q. When was the last time that you saw
12 her?

13 A. I don't remember.

14 MR. HSU: Was the last time when
15 you saw her is the time that she said
16 that you might have glaucoma?

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18 questions on eyes for a ruling. We'll
19 put it to a motion if the judge says
20 that he is entitled.

21 MR. PLATTA: What did he mean by
22 the change of prescription, then I know
23 I will be entitled to I want him to
24 explain.

25 MR. HSU: When you used the word

40

1 M. DIAZ-DIAZ

2 prescription, did they give you
3 something different so that you can see
4 or did they just change the frame?

5 THE WITNESS: They check up with
6 the special machine, whatever and the
7 doctor they have and they told me those
8 glasses that you have, we can't use the
9 same one glass, the same lenses because
10 they don't fit into the frame, so they
11 decided to measure me and gave me the
12 new glasses with the new frames.

13 Q. And this new prescription for new
14 lenses, who gave you the prescription?

15 MR. HSU: What was the name of the
16 store. Note my objection to
17 prescription. It's not a prescription,

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1204from

17 THE WITNESS: Yes, exactly.

18 Q. At that time did she tell you to
19 come back to her because of your eyes?

20 MR. HSU: Because of your
21 prescription not because of your
22 glaucoma.

23 A. She always puts dates for when the
24 date comes, so I went to the place to change my
25 glasses.

39

1 M. DIAZ-DIAZ

2 Q. When did you change your glasses,
3 are you talking about 2007?

4 A. Yes, when I got my income tax I
5 went to this place and they changed the glasses
6 and the prescription.

7 Q. Sir, when you just said you changed
8 your prescription, what do you mean by that?

9 A. The lady moved, I told her that the
10 frames bothered my face. I go to the other
11 doctor the other optician, I told them my
12 problem, they showed me these frames, I tried
13 them on and they said yes. And I told him I
14 needed my glasses to play softball, so with
15 some instrument he checked me out and here are
16 my glasses.

17 MR. HSU: Let's mark any further
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18 it's just the size of the frames from
19 the glasses changed. He just said that
20 the size of the glasses changed and the
21 frame changed.

22 A. I don't remember the name.

23 Q. Do you have anything at home that
24 would indicate this name?

25 A. Yes, I have something on it that

41

1 M. DIAZ-DIAZ

2 indicates it.

3 MR. PLATTA: I'll ask for the
4 production of the name of the place
5 where Mr. Diaz had his prescription
6 changed or where his eye vision was last
7 checked at the time.

8 MR. HSU: He never said that he had
9 his vision checked he said the lenses
10 were changed and the frame was changed.
11 I'll note your request.

12 Q. Sir, at the time, did they examine
13 your vision, how well can you see?

14 MR. HSU: He already said that they
15 put him under the big machine. They
16 could use the same prescription but they
17 changed the lenses or glasses. If you
18 want her to read it back, it's the same
Page 40

1204from
19 question ten times, the same questions
20 she read back the last few questions.
21 Let the record reflect it appears
22 although he had an eye examine then he
23 testified -
24 MR. PLATTA: His testimony is on
25 the record.

42

1 M. DIAZ-DIAZ
2 Q. Sir, on February 14th of 2007, what
3 was the type on your driver's license?
4 A. Class A is my driver's license.
5 Q. Can you tell me what does Class A
6 mean?
7 A. That means that I can drive a
8 vehicle with weight over 26,000 pounds.
9 Q. Since when did you have this
10 driver's license?
11 A. Four to five years.
12 Q. Did you have any other driver's
13 license before?
14 MR. HSU: wait, did you have any
15 others besides the regular one that he
16 testified to?
17 MR. PLATTA: I just want to find
18 out if he had any other classes of

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1204from
20 Q. When was this?
21 MR. HSU: If you remember, if you
22 don't remember say, I don't remember.
23 A. I don't remember.
24 Q. Was it before or after 2000?
25 A. No, after 2000, it was 2001, I

44

1 M. DIAZ-DIAZ
2 don't remember well.
3 MR. HSU: Do you still have a CDL
4 license?
5 THE WITNESS: Yes, a CDL.
6 MR. HSU: If you want a copy of his
7 CDL license then you'll have a copy.
8 MR. PLATTA: I'll put the request
9 in writing.
10 Q. Sir, when was the first time that
11 you received a New Jersey driver's license?
12 A. Earlier 1999, I answered the same
13 question before. February 1999, February or
14 March.
15 Q. At that time, was your eye vision
16 checked?
17 A. No, I didn't have problems.
18 Q. I'm not asking if you had a
19 problem, I'm asking if it was checked?

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19 driver's licenses.
20 A. Before I have class C.
21 Q. Can you tell me what class C is
22 for?
23 A. That means that I could drive
24 vehicles that don't exceed 26,000 pounds.
25 Q. Did you have any other class of

43

1 M. DIAZ-DIAZ
2 driver's license at any time?
3 A. Yes. When I came to the country I
4 had Class D.
5 Q. And that D stands for?
6 A. Regular driver's license to drive
7 any car, small car, a vehicle that you own.
8 Q. When did you change your driver's
9 license from B to C?
10 MR. HSU: He doesn't have to change
11 his driver's license. He gets that on
12 top of his driver's license, you are
13 allowed to drive multiple classes.
14 Objection to the form.
15 Q. Sir, can you tell me how was the
16 class of your driver's license changed from D
17 to class C?
18 A. I then applied for my commercial
19 driver's license, CDL.

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20 A. Yes. When you go to the Department
21 of Motor Vehicles to obtain your license the
22 first thing that you have is an eye check and
23 if you have a have problem you get sent to a
24 doctor.
25 Q. Were you sent to a doctor at the

45

1 M. DIAZ-DIAZ
2 time?
3 A. No.
4 Q. When you changed your driver's
5 license to Class C, did you have to undergo the
6 eye test?
7 A. Yes.
8 Q. As a result of this?
9 A. Yes, the change of category.
10 Q. As a result of this eye test, did
11 you have to go to the doctor?
12 A. No.
13 Q. When you changed your driver's
14 license to Class A, did you have an eye test?
15 MR. HSU: Objection to form.
16 THE WITNESS: No, because I already
17 have the license CDL.
18 Q. Was your driver's license, and by
19 that I mean any driver's license ever suspended
20 in New Jersey?

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21 MR. HSU: Note my objection.
 22 A. No.
 23 Q. Were you ever convicted of a crime?
 24 A. No, sir.
 25 Q. On February 14th of 2007?

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M. DIAZ-DIAZ

1 MR. HSU: February 14 or 24?
 2 MR. PLATTA: 14th.
 3 A. Within 24 hours prior to the
 4 accident, did you have any alcohol to drink?
 5 MR. HSU: Just answer the question,
 6 yes or no.
 7 A. No.
 8 Q. Did you take any prescription
 9 medication within 24 hours prior to the
 10 accident?
 11 A. No.
 12 Q. Did you fail to take any
 13 prescription medicine prior to the accident
 14 that you were supposed to take within 24 hours
 15 of the accident?
 16 A. No.
 17 Q. Did you take any illegal drugs
 18 prior to the accident?
 19 A. No, sir.
 20

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22 Q. Do you know who owned this truck?
 23 A. All America Hauling.
 24 Q. Did you have permission to operate
 25 this truck?

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M. DIAZ-DIAZ

1 A. My license allows me to operate
 2 that truck.
 3 Q. I understand, but did you have
 4 permission from All America Haulers to operate
 5 this truck?
 6 A. Sure.
 7 Q. And who gave you permission?
 8 A. The owners.
 9 Q. What is the name of this person?
 10 A. There is a gentleman named Bobby
 11 Toledo.
 12 Q. Did he tell you specifically that
 13 you can operate this vehicle on the night of
 14 the accident February 14th?
 15 A. Yes, sir.
 16 MR. HSU: Off the record.
 17 [Discussion held off the record.]
 18 Q. Sir, do you have a specific
 19 conversation at any time prior to February 14th
 20 of 2007 with anyone from All America Haulers
 21

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21 Q. Sir, on February 14, 2007, do you
 22 remember being involved in a motor vehicle
 23 accident?
 24 A. Sure.
 25 Q. Where was it?

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M. DIAZ-DIAZ

1 A. 23rd Street and Lexington Avenue in
 2 Manhattan.
 3 Q. What time of day did it happen?
 4 A. It was around 3:35, 3:30.
 5 Q. A.m. or p.m.?
 6 A. A.m.
 7 Q. At that time were you operating a
 8 vehicle?
 9 A. Yes.
 10 Q. What type of vehicle was it?
 11 A. A heavy vehicle.
 12 Q. Can you tell me what the make and
 13 model of this vehicle was?
 14 A. MAC, I don't know the model, but it
 15 was for garbage.
 16 MR. HSU: Step outside for a
 17 second. Off the record.
 18 [Discussion held off the record.]
 19 Q. Sir, was it a sanitation truck?
 20 A. Yes.
 21

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22 that you could operate this vehicle that was
 23 involved in the accident, February 14, 2007?
 24 MR. HSU: He just testified that
 25 the owners gave him permission at the

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M. DIAZ-DIAZ

1 time of the accident, so you are asking
 2 him if he had any conversations to drive
 3 that vehicle prior to February 14th you
 4 have to specify you are asking if there
 5 was any conversation about driving that
 6 vehicle.
 7 MR. PLATTA: No, I said prior to
 8 February 14th.
 9 MR. HSU: He just said that he had
 10 permission. You have permissive use,
 11 what you just asked him the same
 12 question a different way. He already
 13 gave you the answer that you need, I'll
 14 state on the record that are he had
 15 permission to drive the vehicle, it was
 16 permissive uses okay, it was not a
 17 stolen vehicle.
 18 MR. PLATTA: I'll ask to you amend
 19 your pleading because your Answer states
 20 something else.
 21 MR. HSU: And the witness who was
 22

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23 been driving the car just testified that
24 he per notification drives it, and I
25 don't think that he denied knowledge.

50

M. DIAZ-DIAZ

1 Form basis or belief that what it says,
2 not out right being denied.
3
4 MR. PLATTA: Look at the 14th.
5 MR. HSU: This is not my signature.
6 MR. PLATTA: That's mine, so we
7 have a stipulation.
8 Q. Sir, did the vehicle that you were
9 operating on February 14th of 2007, did you
10 come into contact with another vehicle at the
11 location of 23rd Street and Lexington Avenue?
12 A. Yes, sir.
13 Q. Can you describe the other vehicle?
14 A. I think it was a Ford, big vehicle.
15 MR. HSU: Four or Ford?
16 THE WITNESS: No, Toyota Four by
17 Four.
18 Q. Can you tell me the color of this
19 vehicle?
20 A. I think it was green.
21 MR. HSU: Don't guess. Do you know
22 the color?

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24 and the ones on the side and in the back it was
25 like and outlined in yellow.

52

M. DIAZ-DIAZ

2 Q. Sir, can you tell me what was the
3 approximate weight of this vehicle?
4 A. I don't know how to say.
5 MR. HSU: Do you know the weight of
6 the vehicle?
7 THE WITNESS: Totally with whatever
8 you put on top is 60,000 pounds.
9 Q. At the time of the accident, was it
10 fully loaded or not?
11 A. No, it was not.
12 Q. If the vehicle was empty, what was
13 the weight of it, if you know?
14 A. No, I don't know exactly the weight
15 of the vehicle.
16 MR. HSU: When you were saying
17 60,000 pounds earlier, were you saying
18 that the truck holds 60,000 pounds of
19 garbage; is that what are you saying?
20 A. Everything included between the
21 garbage and the truck can exceed 60,000 pounds.
22 Q. And can you tell me if the weight
23 of the truck was over 26,000 pounds?

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23 THE WITNESS: I'm not so sure,
24 could be green.
25 Q. What was the color of your vehicle?

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M. DIAZ-DIAZ

2 A. My vehicle, it was black, gray and
3 the head of the truck was blue.
4 Q. Did you have the name of the
5 company, All America Haulers anywhere printed
6 on it?
7 MR. HSU: On the truck?
8 MR. PLATTA: On the truck.
9 A. Yes.
10 Q. Where was the name printed?
11 MR. HSU: Objection, you just asked
12 if the name was printed.
13 MR. PLATTA: No I asked where it
14 was printed.
15 A. On the two doors and on the side of
16 the truck.
17 Q. Can you tell me what was the color
18 of the signs of your vehicle, do you recall the
19 color of the signs of the vehicle?
20 A. The truck is 60,000 pounds.
21 Q. What is the color of the signs on
22 the truck?
23 A. The door had white lettering, okay.

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24 MR. HSU: At the time accident?
25 MR. PLATTA: Yes.

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M. DIAZ-DIAZ

2 A. More than 26,000 pounds.
3 Q. More than 30,000 pounds?
4 MR. HSU: If you know.
5 A. I don't know.
6 MR. PLATTA: Off the record.
7 [Discussion held off the record.]
8 A. I don't have a specific weight.
9 Q. Sir, can you tell me how many times
10 before the date of the accident, February 14th
11 did you operate this same truck?
12 A. I imagine from when I started in
13 late November, when I started working.
14 Q. And you always operated the same
15 truck?
16 A. The same.
17 Q. Did you ever experience any
18 mechanical problems with this vehicle since you
19 started driving it in November?
20 A. No.
21 Q. Do you know when was the last time
22 that the brakes were checked in this vehicle?
23 A. Every morning a driver of the truck
24 is supposed to check everything; brakes, oil,

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1204from
25 water, anything, examining the truck before
54

1 M. DIAZ-DIAZ
2 they move it.
3 Q. Did you examined everything in the
4 truck on February 14th?
5 MR. HSU: Did he say before that a
6 driver checks it or he checks it?
7 A. Every single chauffeur does it
8 every time.
9 Q. Did you do it on the 13th?
10 A. Yes, I did it.
11 Q. And was everything fine or did you
12 experience any problems?
13 A. Everything was okay, otherwise the
14 police would have stopped me and gave me
15 tickets.
16 Q. Do you know when the last time that
17 the brakes were changed in this vehicle, if you
18 know?
19 A. No.
20 Q. Since November were they changed?
21 MR. HSU: He just testified the
22 last time they were changed and now you
23 are asking him if he doesn't know when
24 it was.

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1 M. DIAZ-DIAZ
2 MR. PLATTA: Yes.
3 A. Right after I punch the card and
4 then I check and got into the truck.
5 Q. What time?
6 A. It was before 3:00 when I just put
7 the ignition on.
8 Q. Sir, what did you do the evening
9 before on February 13th?
10 A. I sleep a lot.
11 Q. What time did you go to bed on
12 February 13th?
13 A. Like the chickens in Santa Domingo,
14 with the sun.
15 Q. What time did you go to bed the
16 evening before?
17 A. I go to sleep at like 7:00 and I
18 make a stop to go back to bathroom and will
19 come back to sleep.
20 Q. How many hours of sleep did you
21 have before the accident?
22 A. Practically seven hours or more.
23 Q. The night before did you sleep
24 seven hours or more?
25 MR. HSU: Objection, you just asked

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25 Q. Sir, on February 14th, what time
55

1 M. DIAZ-DIAZ
2 did you begin working that night?
3 A. We always start at 3:00 a.m. in the
4 morning.
5 Q. Did you start working that day at
6 3:00?
7 A. Yes, sir.
8 Q. Where did you go to begin your
9 work, where was your place to work?
10 A. We came from Passey and our place
11 of work is NYU.
12 Q. When did you begin driving this
13 vehicle that night?
14 MR. HSU: Where did you first get
15 into the car, what location?
16 A. Liberty Avenue is the avenue and
17 the station is All America American.
18 Q. Can you tell me is this in New
19 Jersey?
20 A. Yes.
21 Q. Around what time did you get into
22 your car that night?
23 MR. HSU: Objection to form. Do
24 you mean the truck that he was driving
25 at the time of the accident?

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1 M. DIAZ-DIAZ
2 how many hours did he sleep, he said
3 seven hours or more, now are you saying
4 you had seven hours of sleep? Read back
5 the question and answer. Off the
6 record.
7 [Discussion held off the record.]
8 Q. Sir, what route did you take from
9 Liberty Street to the place of the accident?
10 A. I take Liberty Street and I take
11 Egge Avenue and Route 21, then I take Route 3
12 East then I cross Lincoln Tunnel, I take Ninth
13 Avenue in New York until 23rd Street.
14 MR. HSU: And then.
15 A. And on 23rd I continue to First
16 Avenue and I make a left.
17 MR. HSU: Up to what point of the
18 accident, that's what he wants to know,
19 so from Ninth Avenue you make a left on
20 23rd?
21 A. Yes.
22 Q. Can you tell me what was your
23 average speed?
24 MR. HSU: At what point?
25 MR. PLATTA: Any point.

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1 M. DIAZ-DIAZ
2 MR. HSU: His average speed from
3 the first time that he got into the
4 vehicle up until the point of the
5 accident, give him a timeframe.
6 A. Between 15 to 20 miles per hour.
7 Q. Did you take any breaks on your way
8 from Liberty Street to 23rd?
9 A. No.
10 Q. What time did you get to 23rd
11 Street?
12 MR. HSU: 23rd and Ninth or 23rd
13 and 8th, what?
14 MR. PLATTA: 23rd and Lexington.
15 A. Around 3:30.
16 Q. Okay. Is it fair to say that you
17 took only half an hour to get to Liberty Street
18 to the 23rd Street and Avenue Lexington
19 intersection?
20 MR. HSU: He's not an expert, I
21 object to the form.
22 MR. PLATTA: I'm asking him about
23 the direction.
24 MR. HSU: How long did it take you
25 to get from all American Haulers to the

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1 M. DIAZ-DIAZ
2 point where the accident occurred,
3 approximately?
4 THE WITNESS: Half an hour to 35
5 minutes.
6 Q. What is the distance that you
7 traveled from Liberty Street to 23rd and
8 Lexington?
9 MR. HSU: The miles.
10 A. I never measured it.
11 Q. Can you estimate for me, was it
12 more than 20 miles?
13 MR. HSU: Don't guess.
14 Q. Do you know how many miles it was?
15 A. No, no, no, I can't.
16 Q. Was this more than 40 miles from
17 when you started your trip to Liberty Avenue?
18 MR. HSU: Only if you know for
19 sure.
20 A. I don't know how many.
21 Q. Can you estimate for me?
22 A. I can't say because I don't know
23 exactly.
24 Q. Sir, you drove the same route every
25 day since November of 2006 until the time of

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1204from

1 M. DIAZ-DIAZ
2 the accident, yes or no?
3 A. Yes, sir.
4 Q. Sir, what is the distance between
5 Liberty Street and Segre Avenue?
6 A. They are very close.
7 Q. More than a block or less than a
8 block?
9 A. A block, it's more or less a block
10 because as soon as I leave, I entered there.
11 Q. Once you are Egge Avenue before you
12 enter Route 21, what is the distance that you
13 traveled on Egge Avenue?
14 A. On Egge Avenue it's also pretty
15 much close, it's a straight line and it's very
16 close.
17 Q. Was it more than a block or
18 something else?
19 A. It's about a mile, something like
20 that.
21 Q. And what distance did you travel on
22 Route 21 before you enter 3 East?
23 A. It's also very close.
24 Q. Is it also around one mile?
25 MR. HSU: Only if you know.

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1204from

1 M. DIAZ-DIAZ
2 A. Okay, from the exit of Route 21 to
3 number Route 3, it could be two or three miles.
4 Q. Once you get on Route 3, what was
5 the distance that you traveled on Route 3 East?
6 A. I don't know.
7 Q. Is it more than three miles?
8 A. No, because it's close from there
9 to Manhattan.
10 Q. Is the distance longer than the one
11 on Route 21?
12 A. Yes, sir.
13 Q. Would you say it's twice as long?
14 MR. HSU: Only if you know.
15 A. I can't tell you, I don't know how
16 to tell you that.
17 Q. Sir, you told me that on Route 21
18 you traveled or two or three miles. My
19 question is, is the distance that you traveled
20 on Route 3 twice as long or something else, if
21 you can describe for me your best estimate?
22 A. It's more than double what I travel
23 on Route 21.
24 Q. Is it more than three times more
25 than the distance of Route 21?

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1 M. DIAZ-DIAZ
Page 60

1204from

2 A. Exactly I can't tell you.
3 Q. Is it less than three times the
4 distance that you took on Route 21?
5 A. More than three times the distance
6 but I don't know how much.
7 MR. HSU: Is it more or less, do
8 you know what three times, he's saying
9 more or less than nine miles. Do the
10 math, he's giving you math, more or less
11 than nine miles only if you know, if up
12 don't know, tell him you don't know. If
13 you are able to approximate or you can't
14 estimate accurately. You are giving him
15 math and not even telling him.
16 MR. PLATTA: Three times the
17 distance.
18 MR. HSU: Tell him nine miles.
19 A. I can't estimate, I don't know
20 exactly. I can't estimate the number of miles.
21 Q. Sir, how long does it take you to
22 you drive on Route 21, on average?
23 MR. HSU: Up to what point?
24 MR. PLATTA: Up to the turn on
25 Route 3.

63

M. DIAZ-DIAZ

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1204from

3 MR. PLATTA: I'll repeat it.
4 Q. What the basis of your belief that
5 you are a professional driver?
6 A. The license, second there is
7 checkpoint and they tell you that you are a
8 professional, so I believe that I am a
9 professional.
10 Q. What do you mean by checkpoint?
11 A. Checkpoint, that's checkpoint is
12 told by the traffic police when they need to
13 check the truck or they are missing something.
14 Q. Sir, what was distance that you
15 traveled once you turned from Route 3 to the
16 Lincoln Tunnel?
17 A. I told you that I can't tell you
18 exactly. I never looked for the mileage to
19 know how many miles I drive.
20 Q. Can you estimate?
21 A. No.
22 MR. HSU: Off the record.
23 [Discussion held off the record.]
24 Q. Once you turned onto Ninth Avenue,
25 can you tell me the distance that you traveled

65

M. DIAZ-DIAZ

on Ninth Avenue?

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1204from

2 A. I don't know exactly, I never timed
3 it.
4 Q. Is it more than 10 minutes?
5 A. I don't know exactly.
6 Q. More than 20 minutes?
7 A. I can't tell you exactly.
8 Q. Sir, do you consider yourself a
9 professional driver?
10 MR. HSU: Objection to the term
11 professional.
12 MR. PLATTA: Okay.
13 Q. What is the basis of your belief
14 that you are a professional driver?
15 MR. HSU: I'm going to object to
16 professional, can you clarify?
17 MR. PLATTA: He said yes, but he
18 understands it.
19 MR. HSU: Clarify. Does he work
20 for a living as a driver, what does
21 professional mean. Clarify
22 professional.
23 MR. PLATTA: He understood
24 professional. He responded to that, let
25 him respond.

64

M. DIAZ-DIAZ

MR. HSU: This is out of control.

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1204from

3 A. I don't know, I can't say.
4 Q. Can you estimate?
5 A. I never saw how many miles.
6 Q. Can you tell me the timeframe, how
7 much time did it take for you to finish driving
8 on Ninth Avenue?
9 A. I don't know.
10 Q. Once you entered 23rd Avenue, what
11 was the distance that you traveled on 23rd
12 Avenue from Ninth Avenue to 23rd Street before
13 you reached the Lexington Avenue?
14 A. I don't know.
15 Q. What about the timeframe once you
16 entered 23rd Street, once you reached Lexington
17 Avenue?
18 A. I can't tell you exactly the time.
19 Q. Can you estimate for me?
20 A. No.
21 Q. Sir, did there come a time when you
22 passed 23rd Street and Madison Avenue before
23 the accident?
24 A. I don't know, the light takes
25 longer, so I don't remember if I had to make

66

M. DIAZ-DIAZ

any stops.

Q. What were you supposed to do, pick

Page 64

1204from

4 up trash or something else?
5 A. On Monday, I am supposed to pick up
6 cardboard to recycle and three times a week
7 cardboard, one day glass and another time
8 demolition items, all this stuff they were
9 throwing away from the company.
10 Q. Do you remember what day of the
11 week it was when the accident happened?
12 A. I know it was February 14th, but I
13 don't remember the date.
14 Q. If I told you Wednesday, would it
15 refresh your recollection?
16 A. I don't remember.
17 Q. Can you tell me if on a Wednesday
18 you were supposed to pick up any trash from
19 23rd Street once you entered 23rd from Ninth?
20 A. I don't pick up anything on 23rd
21 Street.
22 Q. On February 14th of 2007, did you
23 stop your truck on the side the road at any
24 time while you were on 23rd Street?
25 A. No, I didn't stop.

67

M. DIAZ-DIAZ

1 Q. What was your intended destination
2 had the accident not happened?

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1204from

5 MR. HSU: Objection. Asked and
6 answered.
7 MR. PLATTA: Read back the last few
8 questions and answers.
9 [Whereupon, the requested portion
10 of the record was read back by the Court
11 Reporter.]
12 Q. Sir, was the first time that you
13 noticed that there was an SUV that was involved
14 in accident in front of you?
15 MR. HSU: Objection to SUV. He
16 didn't say SUV, he said a Toyota four by
17 four.
18 MR. PLATTA: Toyota four by four,
19 fine.
20 MR. HSU: Objection to in front of
21 him. I don't know if he said in front
22 of him. Rephrase the question. He
23 never said in front of him.
24 Q. Sir, where was the vehicle that was
25 involved in this accident with your truck when

70

M. DIAZ-DIAZ

1 you first saw it?
2 MR. HSU: Perfect.
3 A. That's what I can't explain, I
4 don't know from where it came.

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1204from

4 A. Okay, I was going to NYU, so from
5 23rd I went to First Avenue, from there it was
6 my first stop so from there, I don't remember.
7 * Q. Is it fair to say that you didn't
8 reach your first stop that night?
9 MR. HSU: Objection to the form. He
10 testified he was in an accident. It
11 happened on Lexington and 23rd. His
12 first stop is on 23rd Avenue and you
13 asked his intended destination if the
14 accident had not occurred, the
15 transcript speaks for itself. He asked
16 and answered the question. The question
17 is asked and answered.
18 MR. PLATTA: Fine.
19 MR. HSU: It's asked and answered.
20 You asked him if it was fair to say if
21 he was on 23rd Street?
22 MR. PLATTA: I didn't get to the
23 point where he said he was struck on
24 23rd.
25 MR. HSU: He said that he made a

68

M. DIAZ-DIAZ

1 left on- Slawek, this is asked and
2 answered, I'm not letting you walk the
3 guy in circles, ask another question.

Page 66

1204from

6 Q. Did you see it at any time prior to
7 the impact?
8 A. Sure, I saw that.
9 Q. Where was it when you first saw it?
10 A. It was in the corner I said, but
11 wait, let me think a minute, excuse me. I
12 don't know from where the vehicle came, that
13 vehicle came so fast when she came out, she was
14 on the side and right there I came.
15 Q. Where was her vehicle at the time
16 when you first saw it?
17 MR. HSU: Listen to the question.
18 When you first saw the other vehicle,
19 where was it, where was it when you
20 first saw it before the accident?
21 THE WITNESS: In front of my car.
22 In front of my car, she stopped in the
23 side right in front of my truck.
24 Q. Tell me one thing, what was your
25 speed at the moment when you first saw her?

71

M. DIAZ-DIAZ

1 A. I couldn't see because I can't look
2 down. When I see this car in front of me I
3 can't tell the speed.
4 Q. Are you able to estimate based on

Page 69

1204from
6 your experience what your speed was at that
7 moment?
8 A. I always keep my same speed.
9 Q. That's not my question. What was
10 your speed?
11 A. 15 to 20 miles.
12 Q. Did your speed decrease before the
13 impact?
14 A. Yes.
15 Q. Sir, the first time that you saw my
16 client's vehicle, where was your vehicle in
17 relation to Lexington Avenue?
18 A. I wasn't too far, I wasn't too far.
19 Q. If you imagined a block between
20 Lexington Avenue and Park Avenue, Park Avenue
21 being the avenue that you just passed getting
22 towards Lexington, were you in the middle of
23 the block, closer to Lexington or closer to
24 Park at the time when you first saw my client's
25 vehicle?

72

M. DIAZ-DIAZ
1 A. I was closer to Lexington Avenue.
2 Q. Can you estimate for me the
3 distance from Lexington Avenue that you were at
4 the time when you first saw my client's
5 vehicle, can you estimate for me the distance
6
Page 70

1204from
7 Q. What is the length of your truck?
8 A. I don't know.
9 Q. Is it more than 20 feet?
10 A. Yes, more than 20 feet.
11 Q. More than 30 feet?
12 A. No, no, no.
13 Q. Can you estimate for me how far the
14 front of my client's vehicle was at the time
15 when you first saw it from the intersection
16 with Lexington Avenue?
17 A. It wasn't too far.
18 Q. Was it more than a car length,
19 and by car length, I mean your truck size car
20 length?
21 A. It was the size of my truck.
22 Q. And where was your right leg at the
23 time that you first spotted my client's
24 vehicle?
25 A. On the brake.

74

M. DIAZ-DIAZ
1 Q. Was your leg on the brakes because
2 you saw my client's vehicle in front of you or
3 for some other reason?
4 A. It was a spontaneous reaction.
5 Q. A reaction to my client's vehicle
6 or something else?
7

Page 72

1204from
7 that you were from Lexington Avenue at the time
8 that you first saw my client's vehicle?
9 A. How can I say it?
10 MR. HSU: No, just talk, no hand
11 gestures.
12 A. She came so suddenly, so
13 unexpectedly, it wasn't too far off Lexington.
14 Q. Can you tell me if the front of
15 your vehicle was more than five car lengths
16 away from Lexington Avenue at the time when you
17 first saw her?
18 A. In trucks, not my vehicle.
19 Q. Let's say regular sedan vehicles.
20 A. I can't tell you exactly how much
21 it was, but I can tell you that it was very
22 close.
23 MR. HSU: Off the record.
24 [Discussion held off the record.]
25 Q. Sir, can you tell me the distance

73

M. DIAZ-DIAZ
1 between the front of your vehicle and Lexington
2 Avenue, was it the length of your truck or more
3 of the front of your vehicle and Lexington
4 Avenue?
5 A. Something like two trucks.
6

Page 71

1204from
8 MR. HSU: Over my objection.
9 A. A reaction because I saw the
10 vehicle.
11 Q. A second before you saw her
12 vehicle, where was your right leg a second
13 before you saw her?
14 A. On the brakes.
15 Q. And why was your leg on the brakes
16 a second before you even saw my client's
17 vehicle?
18 MR. HSU: Objection to the form of
19 the question. It asks for a conclusion.
20 A. That's the reaction when you see
21 something in front of you, that's your
22 reaction.
23 Q. But I'm asking you when you first
24 saw my client a second before you saw her?
25 MR. HSU: You haven't established

75

M. DIAZ-DIAZ
1 that he didn't see her a second before
2 the accident. Are you asking one second
3 before he saw her?
4 MR. PLATTA: Correct.
5 MR. HSU: You didn't say before the
6 accident.
7

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1204from
8 MR. PLATTA: No, before he saw her.
9 A. On the brakes before I saw her.
10 Q. Five seconds before you saw her,
11 where was your right leg?
12 A. On the brakes.
13 Q. 10 seconds before you saw her,
14 where was your right leg?
15 MR. HSU: No, 10 seconds before
16 where was your foot?
17 THE WITNESS: On the brakes.
18 Q. Sir, how much time has past between
19 you stepping on the brakes your car until the
20 moment that you saw my client?
21 A. Between 10 to 12 seconds.
22 Q. Okay, 15 seconds before you saw my
23 client where was your right leg?
24 A. 15 seconds before, the brakes.
25 Q. Okay. 20 seconds before you saw my

76

1 M. DIAZ-DIAZ
2 client for the first time, where was your right
3 leg?
4 A. In that case I can't tell you
5 because she came out of nowhere in one second.
6 Q. Before you even saw her, for the 20
7 seconds before you even saw her for the first
8 time, where was your right leg?
Page 74

1204from
9 Q. Sir, do you remember where your
10 vehicle was when you first applied pressure to
11 the brakes prior to the time when you first saw
12 my client's vehicle?
13 A. I was close to her.
14 Q. You just testified it was at least
15 20 seconds. My question is when you started
16 braking, where was your vehicle at least 20
17 seconds before you first saw my client's car on
18 23rd Street?
19 A. 20 seconds before, it's difficult
20 to calculate what I did 20 seconds before.
21 Q. Can you tell me if your vehicle was
22 already past the intersection of Park Avenue at
23 that time?
24 A. It's possible.
25 Q. Sir, as you were driving on 23rd

78

1 M. DIAZ-DIAZ
2 Street and you passed Park Avenue, what, if
3 anything, did you see in front of you?
4 A. When I crossed Park Avenue I didn't
5 see anything, that was after.
6 Q. What did you see in front of you
7 once you past Park Avenue and 23rd Street?
8 A. It was a lot after I crossed Park
9 Avenue.

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1204from
9 A. I don't know, this is confusing.
10 MR. HSU: There is no question,
11 wait for the question.
12 A. The 10 seconds, the 20 seconds -
13 MS. HSU: There is no question
14 pending.
15 Q. Sir, was there any time when you
16 were driving on 23rd Street where your right
17 leg was on the acceleration pedal?
18 A. Before the accident?
19 Q. At any time on 23rd Street when you
20 entered on Ninth Avenue and 23rd Street?
21 A. Yes.
22 Q. Between Park Avenue and Lexington
23 Avenue, did you press with your right leg the
24 acceleration pedal?
25 A. I don't remember.

77

1 M. DIAZ-DIAZ
2 Q. When you entered the block from
3 Park Avenue and you were entering, you were
4 driving on 23rd Street, at the moment at the
5 intersection between 23rd and Park, was your
6 right leg on the acceleration or the brakes?
7 MR. HSU: Objection to form.
8 A. I don't remember.

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1204from
10 Q. I'm just asking what did you see as
11 you crossed Park Avenue and 23rd, what did you
12 see?
13 A. At the moment of Park Avenue no, I
14 didn't see anything.
15 Q. What were the lighting conditions
16 on the block of 23rd Street and between Park
17 Avenue and Lexington?
18 A. It was a little bit dark.
19 Q. Were you able to see the buildings
20 on either side the street?
21 MR. HSU: Objection to the form of
22 the question. It assumes there are
23 buildings on the side of the street.
24 Q. Did you see anything on the side of
25 street?

79

1 M. DIAZ-DIAZ
2 A. Yes.
3 Q. What did you see on the side of the
4 street?
5 A. Cars.
6 Q. And we are talking only about the
7 blocks between Park Avenue and Lexington
8 Avenue. Okay, did you see in this distance
9 anything else besides the cars on the side of

Page 77

1204from
10 the street?
11 A. No.
12 MR. HSU: Yes or no, you have to
13 speak.
14 THE WITNESS: No.
15 Q. Did you see buildings?
16 A. When you came you see them in
17 front.
18 Q. I'm asking about the side of the
19 street of 23rd Street, were there any
20 buildings?
21 A. Yes, there is buildings on both
22 sides.
23 Q. Can you describe the buildings that
24 are on the right side?
25 MR. HSU: You are asking him to

80

1 M. DIAZ-DIAZ
2 describe the buildings on Park?
3 MR. PLATTA: We are only talking
4 about the block between Park and
5 Lexington.
6 MR. HSU: What do you want to know,
7 the material, the color of the building
8 if they have a doorman, are they tall?
9 Q. Are you able to describe the
10 building between Park and Lexington?

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1204from
11 parked?
12 A. On the right side.
13 Q. In which lane of traffic was your
14 vehicle on the block of 23rd Street between
15 Park and Lexington?
16 A. On the right side.
17 Q. Would it be fair to say there were
18 two lanes and your car was in the right lane?
19 MR. HSU: Objection to form.
20 MR. PLATTA: He said two, but he
21 wasn't sure if there was a lane for
22 parked cars.
23 MR. HSU: Read back.
24 [Whereupon, the requested portion
25 of the record was read back by the Court

82

1 M. DIAZ-DIAZ
2 Reporter.]
3 Two moving lanes.
4 MR. PLATTA: Two moving lanes,
5 right.
6 A. Yes, there are two lanes, in the
7 right lane I was driving.
8 Q. And can you tell me, did you change
9 your lane anywhere on the block of 23rd Street
10 from where you entered on Park Avenue until the
11 moment of the impact?

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1204from
11 A. Impossible, no.
12 MR. HSU: Just yes or no.
13 A. No.
14 Q. Sir, were the parked cars on the
15 left side of the road or on the right side of
16 street as you were driving?
17 MR. HSU: Or both.
18 Q. Or both.
19 A. There is only parked cars on both
20 sides.
21 Q. Which direction were you driving on
22 23rd Street?
23 MR. HSU: East or west?
24 A. East.
25 Q. How many lanes of traffic were on

81

1 M. DIAZ-DIAZ
2 the block of 23rd Street between Park and
3 Lexington in your direction Lexington in your
4 direction?
5 A. Two on both sides.
6 Q. Was there also a lane for the
7 parked cars?
8 A. I didn't notice it.
9 Q. Okay, the parked cars that you
10 testified to before, in which lane were they

Page 79

1204from
12 A. I kept driving always in the right
13 lane.
14 Q. Did you also enter into the right
15 lane from Ninth Avenue?
16 A. Yes.
17 Q. Did you remain in the right lane
18 throughout 23rd Street until the moment of the
19 impact?
20 MR. HSU: Objection to the form.
21 You didn't establish there was anything
22 but one lane in the other street between
23 Park and Ninth Avenue.
24 MR. PLATTA: I just asked if he
25 remained in the right lane.

83

1 M. DIAZ-DIAZ
2 MR. HSU: But you have to establish
3 how many lanes there are.
4 MR. PLATTA: He testified before he
5 didn't change lanes.
6 MR. HSU: That doesn't mean he came
7 from one lane to two lanes and -
8 MR. PLATTA: You're right.
9 Q. Sir, when you entered 23rd Street,
10 were there two lanes of moving traffic or more
11 than two?

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1204from
12 MR. HSU: For your direction.
13 A. From the time that I changed from
14 Ninth Avenue and there are also two driving
15 lanes on both sides.
16 Q. Is it fair to say, Counsel with
17 your permission that you remained in the right
18 lane throughout 23rd Street?
19 A. Yes, exact.
20 Q. Can you tell me what were the
21 weather conditions like at the time of the
22 accident?
23 A. It was snowing.
24 Q. Can you tell me what the roadway
25 conditions were on 23rd Street at the time of

84

1 M. DIAZ-DIAZ
2 the accident?
3 MR. HSU: Between Ninth and
4 Lexington or just 23rd and Lexington?
5 MR. PLATTA: Between Park Avenue
6 and Lexington Avenue.
7 A. It was completely covered in snow.
8 Q. Was it also icy?
9 A. It was the first snow. It was the
10 first snow, it wasn't icy, yes, it was the
11 first snow.
12 Q. Can you estimate the thickness of
Page 82

1204from
13 MR. HSU: Ever.
14 A. No.
15 Q. Was there any times that you saw
16 other trucks of All American Haulers have snow
17 chains attached to their wheels as they were
18 leaving the premises?
19 A. No.
20 Q. Do you know when was the last time
21 that the tires in your truck were changed?
22 A. No, I don't remember.
23 MR. PLATTA: Off the record.
24 [Discussion held off the record.]
25 Q. Can you tell me on the day of the

86

1 M. DIAZ-DIAZ
2 accident did you check the depth of the treads
3 on your wheels in your truck on the night
4 before you started driving on the 14th of
5 February?
6 A. I told you before that I checked,
7 that we have to check the truck and that was
8 included.
9 Q. Can you tell me what was the depth?
10 MR. HSU: Objection to form. He
11 just said that he checked the tires.
12 A. They were okay, they weren't in bad
13 condition, they were great.
Page 84

1204from
13 snow on Park Avenue and the Lexington?
14 MR. HSU: Objection.
15 Do you know how much snow was on
16 the ground in terms of inches at the
17 time of the accident, yes or no?
18 THE WITNESS: Yes.
19 MR. HSU: How much snow, do you
20 know?
21 A. It was like four to five inches of
22 snow.
23 Q. And sir, can you tell me was it
24 snowing when you started driving that night
25 from Liberty Street?

85

1 M. DIAZ-DIAZ
2 A. Yes.
3 Q. Was it also three to four inches of
4 snow on Liberty Street as you started driving
5 or no?
6 A. It was less snow in Passey.
7 Q. Sir, can you tell me if you ever
8 drove your vehicle with chains attached to your
9 wheels?
10 MR. HSU: During snow conditions or
11 at any time?
12 MR. PLATTA: At any time.

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1204from
14 Q. And sir, was this a procedure at
15 All American Haulers describing whether you
16 have to put snow chains on the tires?
17 A. As far as I know, no.
18 Q. Did you ask anyone to put the snow
19 chains on your truck before you left that
20 night?
21 MR. HSU: Read that back.
22 [Whereupon, the requested portion
23 of the record was read back by the Court
24 Reporter.]
25 MR. HSU: Yes or no?

87

1 M. DIAZ-DIAZ
2 A. No.
3 Q. Now, we are back to 23rd Street
4 between Park and Lexington, what was the
5 pressure that you applied to the brakes when
6 you first started breaking before you saw my
7 client's vehicle, was it hard, soft or medium?
8 A. It was strong, it was heavy.
9 Q. Did you change the pressure that
10 you applied to the brakes at any time during
11 this 20 seconds -
12 MR. HSU: Mr. Diaz-
13 MR. PLATTA: Hold on. Let me

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1204from
14 finish my question then you can ask
15 yours.
16 MR. HSU: This is before you saw
17 the other vehicle, before you saw the
18 other vehicle.
19 MR. PLATTA: He testified to that.
20 A. I pressed the brakes all the time.
21 Q. Sir, how can you describe the
22 impact between your vehicle and my client's
23 vehicle?
24 A. What form, what way?
25 Q. Can you tell me if it was hard,

88

1 M. DIAZ-DIAZ
2 medium or soft?
3 A. Medium.
4 Q. Were you ever involved in a motor
5 vehicle accident in the United States?
6 MR. HSU: Objection. The basis for
7 that question is what, was he ever
8 involved in a motor vehicle accident in
9 the United States, what relevance does
10 it have to this accident?
11 MR. PLATTA: Relevance is no longer
12 an objection.
13 MR. HSU: How is that going to lead
14 to discoverable evidence if he was ever
Page 86

1204from
15 back of the trunk of my client's vehicle?
16 A. It was bent, but there was no hole
17 in the back.
18 Q. Can you tell me which portion of
19 the car was bent or which parts of the vehicle
20 were bent?
21 A. The back of the car.
22 Q. Was the trunk door bent?
23 A. Yes.
24 Q. Was the fender bent in the rear,
25 the rear fender?

90

1 M. DIAZ-DIAZ
2 A. Yes. Most of it, the door or the
3 trunk and the fender too.
4 Q. Was the fender pushed all the way
5 underneath the car?
6 A. It was bent inside.
7 Q. How many inches?
8 A. I don't know.
9 Q. Was there any glass broken from my
10 client's vehicle?
11 A. I know that it was bent, but I
12 don't remember broken glass.
13 Q. Can you tell me if the rear lights
14 were broken?
15 A. It's possible, but I don't
Page 88

1204from
15 involved in a motor vehicle accident in
16 his life?
17 MR. PLATTA: In the United States.
18 MR. HSU: Answer over my objection.
19 A. No.
20 Q. Sir, do you still work for All
21 American Haulers?
22 A. Now I work for Skuffy?
23 Q. When did you stop working for All
24 American Haulers?
25 A. As soon as they sold the company.

89

1 M. DIAZ-DIAZ
2 Q. And when was that, more or less?
3 A. I don't remember exactly.
4 Q. Sir, can you describe for me the
5 damage to my client's vehicle after the impact?
6 MR. HSU: It assumes he saw it.
7 Ask.
8 Q. Did you see damage to my client's
9 vehicle after the impact?
10 A. Yes, there was damage.
11 Q. Can you describe it?
12 A. The back of the car, it was bent
13 in.
14 Q. Was there a hole in the door in the

Page 87

1204from
16 remember.
17 Q. Can you tell me if the rear side of
18 the vehicle was damaged?
19 A. Yes, the door and the trunk, it was
20 bent up.
21 Q. Was any side of the vehicle damaged
22 as well?
23 A. No, only the back part.
24 Q. How much time did you spend looking
25 at my client's vehicle after the accident?

91

1 M. DIAZ-DIAZ
2 A. All the time that I was there I
3 keep seeing the damage of the car, I saw the
4 damage of the car.
5 Q. And sir, did you go around to see
6 all sides of my client's car?
7 A. I went up to her door in the front
8 and there was no damage, only in the back, only
9 in the back of the car.
10 Q. Can you tell me how much time had
11 passed from the moment when you first saw her
12 until the impact?
13 MR. HSU: Note my objection. I
14 know this was answered.
15 MR. PLATTA: I never went to the

Page 89

1204from
16 actual moment of the impact in
17 timeframe.
18 A. Three to four seconds, something
19 like that.
20 Q. Did your car skid at any point from
21 the moment when you started braking until the
22 moment of impact, did your car ever skid from
23 the moment when you started braking on 23rd
24 Street until the moment of impact?
25 A. The car slid.

92

M. DIAZ-DIAZ
1 Q. How many times?
2 A. It was sliding as soon as I pressed
3 the brake, the car slid.
4 MR. HSU: Are you referring
5 immediately before the impact?
6 THE WITNESS: Yes.
7 MR. HSU: That's when the car skid?
8 THE WITNESS: Yes, right along the
9 time until the impact.
10 Q. Sir, did you have any conversations
11 with the police officers at the scene?
12 A. No.
13 Q. Did you have any conversations with
14 anyone at the scene?
15 A. With the ambulance who was taking
16 Page 90

1204from
17 no, I'm going to use mine. And then she
18 explained to me, she told me that she knew the
19 scale of the impact. She tried to explain to
20 me. I don't know what she meant to tell me,
21 but that's what she was saying to me.
22 Q. Did you have a conversation with
23 anyone else besides her?
24 A. With the paramedic.
25 Q. What was that conversation about

94

M. DIAZ-DIAZ
1 with the paramedics, what was that
2 conversation about?
3 A. Okay. Your client, it seemed like
4 she spoke about me with the paramedics with the
5 lady from the ambulance. And she came to talk
6 to me, so the paramedic was smoking a cigarette
7 and I asked her from my truck, I asked her how
8 is the lady doing, and she told me she is very
9 well, you know she was talking in Spanish to
10 me. She was Puerto Rican.
11 Q. Do you know her name?
12 A. No.
13 Q. At the time that you were talking
14 to her, where was my client?
15 A. In the ambulance.
16 Q. Was she sitting, standing or lying
17 Page 92

1204from
17 care of your client.
18 Q. What was the sum and substance of
19 the conversation between and you the ambulance
20 attendant?
21 A. It was regarding the lady, your
22 client.
23 Q. And what was the conversation
24 about, what did you say?
25 A. I asked to her, how was the lady

93

M. DIAZ-DIAZ
1 doing and she told me she was very fine, she is
2 very well, you know.
3 Q. At the time when this lady said to
4 Mr. Diaz that my client is fine, where was my
5 client?
6 MR. HSU: He's referring your
7 client.
8 Q. Was it my client that you had a
9 conversation with her or the ambulance crew?
10 A. First of all, when the impact,
11 right after the impact I spoke to your client.
12 Q. What was that conversation?
13 A. I asked her how are you doing, how
14 are you feeling, and I'm sorry, so I gave her
15 my phone so she could call 911, and she said,
16 Page 91

1204from
18 down?
19 A. I don't know, I can't tell you
20 because I couldn't see that.
21 Q. Did you see how she got into the
22 ambulance?
23 A. They took her walking into the
24 ambulance.
25 Q. Was she walking or transported?

95

M. DIAZ-DIAZ
1 MR. HSU: Objection. Answered, you
2 just asked and he said she was walking
3 and then you asked if she was walking or
4 something else.
5 MR. PLATTA: Read that back.
6 [Whereupon, the requested portion
7 of the record was read back by the Court
8 Reporter.]
9 MR. HSU: They took her walking.
10 Q. Was she walking into the ambulance?
11 A. Yes, she was escorted by the two
12 gentlemen on the two legs.
13 Q. Did she ever leave the ambulance
14 that you saw?
15 A. No, she didn't come out.
16 Q. Did you ask anybody again how she

Page 93

1204from
18 was feeling after you had this initial
19 conversation with the ambulance?
20 A. No.
21 Q. Do you know what happened to my
22 client afterwards, was she taken away or what
23 happened?
24 MR. HSU: Don't guess.
25 A. They took her in the ambulance but

96

M. DIAZ-DIAZ
1 I don't know what happened after.
2 Q. Do you know what happened to her
3 car?
4 MR. HSU: Does he know what
5 happened to her after the accident?
6 A. The car was bent in the back.
7 Q. What happened to the car
8 afterwards?
9 MR. HSU: In terms of what, did it
10 drive away or did they tow it away, you
11 leave it ambiguous instead of just asking
12 him.
13 A. I just know they moved it. They
14 parked it on the side and they left the car
15 there.
16 Q. Can you describe if there was any
17 damage to your vehicle?
18

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1204from
19 A. Yes, the truck is operated in
20 Scuffy.
21 Q. Are you still operating the same
22 truck?
23 A. No, not the same on the day on the
24 day of the accident, but I keep driving the
25 same type of truck.

98

M. DIAZ-DIAZ
1 Q. Do you know what happened to this
2 exact truck, where was it?
3 A. They use it on a daily basis at
4 Scuffy.
5 Q. Does it have the same plate number
6 on it as it did on the day of the accident?
7 A. No, it doesn't have the same
8 license.
9 Q. Can you identify this truck in the
10 fleet of the new company?
11 A. Yes, I can identify it because I
12 know all the trucks. I see it on a daily
13 basis.
14 MR. PLATTA: I call for any
15 information on the vehicle that Mr. Diaz
16 was driving at the time of the accident
17 and I'm talking about an on-site
18 inspection at the place where the truck
19

Page 96

1204from
19 A. No.
20 Q. Were there any scratches on your
21 car?
22 A. I didn't check for that, I didn't
23 look.
24 Q. Was there any damage to the front
25 fender?

97

M. DIAZ-DIAZ
1 A. No, nothing.
2 Q. Did you check the front fender at
3 the scene of the accident?
4 A. Yes, I did check and I looked at
5 it.
6 Q. Did you take any pictures of your
7 truck after the accident?
8 A. No.
9 Q. Did you see anyone else taking
10 pictures of your car after the accident?
11 A. No, there was no one.
12 Q. Did you take pictures not only at
13 the scene but also at the location where the
14 truck was usually parked?
15 A. No, the truck didn't have anything.
16 Q. Can you tell me where this truck is
17 right now, if you know?
18

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1204from
20 is kept right now.
21 MR. HSU: As Mr. Diaz said, the
22 company that owned the vehicle at the
23 time the accident is no longer in
24 business, but we'll follow-up in
25 writing. Taken under advisement.

99

M. DIAZ-DIAZ
1 Q. From the first time you saw my
2 client's vehicle right before the impact, how
3 much time past between when you first saw her
4 and the actual impact?
5 MR. HSU: Is has been asked and
6 answered.
7 Q. Sir, at the time when you saw my
8 client's vehicle for the first time and this
9 one wasn't asked, how far was the front of your
10 vehicle from the rear of my client's vehicle?
11 A. Very close, you asked me the same
12 questions.
13 Q. Can you estimate the distance?
14 A. Very very close.
15 Q. The length of this table?
16 MR. HSU: Are you able to estimate,
17 yes or no?
18 THE WITNESS: Exactly, no.
19

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1204from
20 MR. PLATTA: Not exactly, just an
21 estimate.
22 A. I can't say that because my
23 reaction wasn't to look at distance, it was to
24 press the brake.
25 Q. I know that. But can I ask you if

100

1 M. DIAZ-DIAZ
2 at the time when you first saw her, what was
3 the distance between the front of your truck
4 and the rear of my client's vehicle, was it
5 larger than the size of this room?
6 A. I told you right now, it was like a
7 truck.
8 Q. The length of your truck?
9 A. I can't tell you exactly, but I can
10 tell you the length of one truck.
11 Q. Can you tell me the size of the
12 truck?
13 A. Yes, exactly like my truck.
14 Q. Did you have any discussions with
15 anyone at the scene of the accident besides my
16 client and the ambulance and police officer?
17 MR. HSU: No. You said after the
18 paramedic if you know if she spoke to
19 someone, you just asked him and he said
20 no one else.

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1204from
21 MR. PLATTA: Are you directing him
22 not to answer?
23 MR. HSU: It's already asked and
24 answered.
25 MR. PLATTA: Your objection is

101

1 M. DIAZ-DIAZ
2 noted.
3 Q. The question was; did you speak to
4 anyone else besides the police officer,
5 ambulance crew and my client at the scene of
6 the accident?
7 A. No.
8 Q. Did you prepare an accident report
9 as a result of this accident?
10 A. I explained it to them and they
11 wrote the report.
12 Q. Did you see this report?
13 A. No, I only explained to them and
14 they did the report.
15 Q. How do you know there was a report?
16 A. I don't know how to tell you but
17 they asked me. They told me they have to tell
18 everything that happened because they were
19 asking for.
20 Q. Did they write it down while you

Page 99

1204from
21 were speaking what they were looking for?
22 A. Literally, yes, of course.
23 Q. That means yes, right?
24 A. Yes.
25 MR. HSU: Yes or no?

102

1 M. DIAZ-DIAZ
2 A. Please wait. Okay, honestly I
3 don't remember if they wrote it down or not. I
4 explained the whole accident to them.
5 Q. Who did you explain it to?
6 A. I am confused, I don't remember, I
7 don't remember.
8 Q. Okay, what did you tell this
9 person?
10 A. Wait, I'm trying to remember. She
11 asked me, she called me and told me to go pick
12 up the report from the police, that's it.
13 Q. When you say said before you don't
14 remember well?
15 A. I don't remember well, I don't
16 remember that part.
17 Q. When you said before that she
18 reported to someone before the accident from
19 your company, did you actually do that or not?
20 A. Yes, because in the company, in any
21 company you are working as a driver you have to

Page 100

1204from
22 call right away, that's appropriate if an
23 accident has happened.
24 Q. What did you say when you reported
25 this accident?

103

1 M. DIAZ-DIAZ
2 A. I told them at the time in the
3 office there was no one yet, because the office
4 was opened at 9:00 in the morning then I called
5 and explained what happened, but I don't know
6 what happened after that, if they took notes or
7 note.
8 Q. Do you know if your car was insured
9 on the day of the accident?
10 MR. HSU: He already provided the
11 insurance company, the policy number and
12 the amount of coverage. We'll provide
13 the physical policy follow-up in
14 writing.
15 MR. PLATTA: I already did. Off
16 the record.
17 [Discussion held off the record.]
18 A. Yes, it was insured.
19 MR. PLATTA: Back on the record.
20 Defendant's counsel provided me with
21 Response to demand for Answers to

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1204from
22 Interrogatories dated November 1, 2007,
23 section 22. "There was minor damage to
24 the defendants vehicle upon information
25 and belief there was minor damage to the

104

1 M. DIAZ-DIAZ
2 front of the vehicle. Defendants are
3 unaware of any repairs or estimates
4 being generated as a result of this
5 accident.
6 MR. HSU: What's the point?
7 MR. PLATTA: Your client testified
8 there was no damage.
9 MR. HSU: He said he didn't check
10 for scratches, minor damage.
11 MR. PLATTA: It was very clean on
12 the record that he said there was no
13 damage.
14 MR. HSU: Whether or not he said
15 there was a bump or not.
16 MR. PLATTA: He said there was
17 nothing.
18 MR. HSU: That's why you get
19 interrogatories, so his testimony is
20 there that's why you had an opportunity
21 to ask him questions.
22 Q. Do you know where the maintenance

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23
24
25

106

1
2
3 MR. HSU: Don't guess, do you know?
4 THE WITNESS: No.
5 Q. Can you tell me if the owner of All
6 American Haulers is the same owner of the
7 company that you work right now?
8 A. Wait. No, they are not the same.
9 MR. PLATTA: Mark Plaintiff's One,
10 the police report.
11 [Whereupon, the above-mentioned
12 police report was marked Plaintiff's
13 Exhibit 1 for identification.]
14 MR. HSU: Come outside.
15 MR. PLATTA: We adjourning this.
16 It is 6:18 p.m.
17 (Whereupon, at 6:18 P.M., the
18 Examination of this witness was
19 concluded.)

MARIO E. DIAZ-DIAZ

21
22
23 Subscribed and sworn to before me
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1204from
23 records are for the truck that you were driving
24 on February 14, 2007 after All American Haulers
25 were no longer in business?

105

1 M. DIAZ-DIAZ
2 MR. HSU: Objection to form.
3 A. Maybe the owner has it, I don't
4 know.
5 (Continued on the next page.)
6
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1204from
24 this ____ day of _____, 2007.
25 _____
NOTARY PUBLIC

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2 ERRATA SHEET
3 CASE NAME: ADONNA FROMETA
4 DATE OF DEPOSITION: MARIO E. DIAZ-DIAZ ALL
5 AMERICAN HAULERS RECYCLING
6 WITNESS' NAME: MARIO E. DIAZ-DIAZ
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21 MARIO E. DIAZ-DIAZ
22 SUBSCRIBED AND SWORN TO
23 BEFORE ME THIS ____ DAY
OF _____, 2007.
Page 105

1204from
24 NOTARY PUBLIC
25 MY COMMISSION EXPIRES _____
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1
2 E X H I B I T S
3
4 PLAINTIFF'S EXHIBITS:
5
6 EXHIBIT EXHIBIT PAGE
7 NUMBER DESCRIPTION
8 1 police report 106
9
10
11 INFORMATION AND/OR DOCUMENTS REQUESTED
12 INFORMATION AND/OR DOCUMENTS PAGE
13 Production of insurance policy on vehicle 10
14 Pay stubs from prior employment 14
15 Production of name & address of eye
16 doctor and HIPAA authorizations for
17 eye doctor 16
18 HIPAA compliance for clinic on Jefferson 27
19 Production of where vision was last checked 41
20 Copy of CDL license 44
21 Any information on truck involved
22 in accident 99
23

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2 QUESTIONS MARKED FOR RULINGS
3 PAGE LINE
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1
2 C E R T I F I C A T E
3
4 STATE OF NEW YORK)
5 COUNTY OF QUEENS) SS.:
6
7
8 I, LORRAINE DeSALVIO, a Notary Public
9 for and within the State of New York, do hereby
10 certify:
11 That the witness whose examination is
12 hereinbefore set forth was duly sworn and that
13 such examination is a true record of the
14 testimony given by that witness.
15 I further certify that I am not related
16 to any of the parties to this action by blood
17 or by marriage and that I am in no way
18 interested in the outcome of this matter.
19 IN WITNESS WHEREOF, I have hereunto set
20 my hand this 11th day of December, 2007.
21
22
23 LORRAINE DeSALVIO
24

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25
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